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Nadia Avalor

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EXAMINER

CARLOS, ALVIN LEABRES

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

04/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/539,651 | Applicant(s) AVALLE, NADIA | |
| | Examiner ALVIN L. CARLOS | Art Unit 3714 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 8 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Final Office action in response to communications received December 28, 2007. Claims 4-5, 7, 10-11 have been canceled. Claims 1, 6, 8-9 have been amended. Claims 1-3, 6, 8-9 are now pending.

Response to Amendments

2. Applicant's amendments to the claims 6, 8-9 are sufficient to overcome the 35 USC 112, second paragraph, rejection set forth in the previous office action.
3. Applicant's amendments to the Drawings are sufficient to overcome the objection to the Figures 8-11 of the drawing set forth in the previous office action.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nikolaus 6199559 in view of Benson 6360658 and further in view of Badami 5236365.

Re claim 1, Nikolaus teaches a process for the surface decoration of a cosmetic product comprising filling of a non- shaped cavity with a decorating product (column 3 lines 22-23), leveling of the decorating product at the top of cavity (column 9 lines 26-

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28), insertion and slight compression of a face provided with shapes of a pad of yielding material into the decorating product and movement of the pad above the cosmetic product to be decorated (column 1 lines 35-41).

However, Nikolaus fails to teach the following limitations as taught by Benson: positioning and slight compression of the pad onto the surface of the cosmetic product to be decorated in order to leave on it parts of decorating product (column 4 lines 65-67 and column 5 lines 1-10), and removal of the pad from the cosmetic product provided with decorations corresponding to parts of decorating product (column 4 lines 65-67. and column 5 lines 1-10).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nikolaus's invention in view of Benson in order to provide a plurality of ink or embossed symbols in an arrangement upon a medium as taught by Benson (column 1 lines 6-8).

However, Nikolaus i.v., Benson fails to teach the following claim limitation as taught by Badami: powder decorating products of different colors (columns 2 lines 36-42).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nikolaus i.v., Benson invention and further in view of Badami in order to provide replicated powder elements used to duplicate the color and texture of powder elements such as facial cosmetics and a method for making such replicated powder elements as taught by Badami (column 1 lines 7-10).

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Re claim 2, Nikolaus i.v., Benson and further i.v., Badami teaches the invention as discussed above. In addition, Benson teaches the shapes project out of face of the pad in larger measure than the depth of cavity (column 5 lines 15-24 and Figure 3).

Re claims 6 and 8, Nikolaus i.v., Benson and further i.v., Badami teaches the invention as discussed above.

However, Nikolaus i.v., Benson fails to teach the following claim limitation as taught by Badami: powder decorating products of different colors (columns 2 lines 36-42).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nikolaus i.v., Benson invention and further in view of Badami in order to provide replicated powder elements used to duplicate the color and texture of powder elements such as facial cosmetics and a method for making such replicated powder elements as taught by Badami (column 1 lines 7-10). In addition, it would have been obvious to one of ordinary skill in the art at the time of the invention to repeat the steps, since reproducing identical steps with the same outcome involves only routine skill in the art. Furthermore, with respect to the desired color, it would have been obvious to use any known color as an obvious matter of design choice as applicant has not provided any criticality for the desired color.

6. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nikolaus 6199559 i.v, Benson 6360658, i.v., Badami 5236365 and further in view of Imamaki 6000335.

Re claim 3, Nikolaus i.v., Benson and further i.v., Badami teaches the invention as discussed above.

However, Nikolaus i.v., Benson i.v., Badami fails to teach the following claim limitation as taught by Imamaki: pad is made of silicon resin (column 2 lines 5-6).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nikolaus i.v., Benson i.v., Badami invention and further i.v, Imamaki in order to prevent an adhesion of original pattern of an original sheet to a stamp member as taught by Imamaki (column 1 lines 40-42).

Re claim 9, Nikolaus i.v., Benson and further i.v., Badami and further in view of Imamaki teaches the invention as discussed above. In addition, Badami teaches a powder decorating products of different colors (columns 2 lines 36-42).

It would have been obvious to one of ordinary skill in the art at the time of the invention to repeat the steps, since reproducing identical steps with the same outcome involves only routine skill in the art. Furthermore, with respect to the desired color, it would have been obvious to use any known color as an obvious matter of design choice as applicant has not provided any criticality for the desired color.

Response to Arguments

7. Applicant's arguments with respect to claims 1-3, 6, 8-9 have been considered but are moot in view of the new ground(s) of rejection.

8. The Examiner reminds that it is the Applicant responsibility to read the entire disclosure of the prior art cited for rejections including the pertinent references cited. In addition, see the above discussion for more clarifications.

9. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., powder decorating products of different colors) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALVIN L. CARLOS whose telephone number is (571)270-3077. The examiner can normally be reached on 7:30am-5:00pm EST Mon-Fri (alternate Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571)272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alvin L Carlos/
Examiner, Art Unit 3714
March 28, 2008
/XUAN M. THAI/
Supervisory Patent Examiner, Art Unit 3714